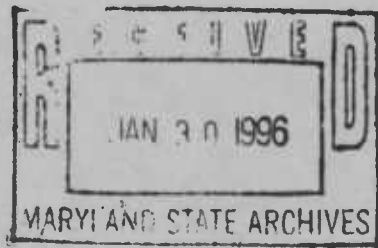


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# **Task Force on Assisted Living**

**Report**

**to**

**The Honorable Parris N. Glendening**

**Governor**

**State of Maryland**

**November 21, 1995**

100

## GOVERNOR'S TASK FORCE ON ASSISTED LIVING

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The Honorable Paula C. Hollinger, Senator, District 11, Baltimore County

### Members

Ms. Elizabeth Boehner, Director, Montgomery County Area on Aging

Ms. Vanessa S. Carter, Grants Administrator, Anne Arundel County Office of Human Services

The Honorable Alvin C. Collins, Secretary, Department of Human Resources

Mr. Darell R. Commack Jr., Administrator, Ivy Hall Geriatric & Rehabilitation Center, Member, Board of Nursing Home Administrator

Mr. John Erickson, Chairman & CEO, Senior Campus Living, Charlestown Retirement Community

Ms. Isabella Firth, President, Maryland Association of Non-Profit Homes for the Aging (MANFA)

Mr. Richard Haddad, Director, Bureau of Administrative Services, Washington Suburban Sanitary Commission \*

Mr. Sandy Harless, ALFAA/ Sunrise Assisted Living

Mr. Joel David Myerberg, Executive Director, Maryland Disabilities Forum \*

Ms. Lynn C. O'Connor, Executive Director, Asbury Methodist Village

The Honorable Alfred W. Redmer Jr., Delegate, District 8, Baltimore City and County

Ms. Susan Dishler Shubin, Attorney at Law, L.C.S.W., Legal Aid Bureau, Nursing Home Program \*

Mr. Glen A. Tipton, Principal, Cockran, Stephenson and Dondervoet

Mr. Donald H. Vandrey, Public Information Officer, City of Rockville

The Honorable Sue F. Ward, Director, Office on Aging

The Honorable Martin P. Wasserman, M.D., J.D., Secretary, Department of Health and Mental Hygiene

Ms. Jordana H. Zubkoff, Manager of Regulatory Affairs, Assisted Living Division, Manor Care, Inc.

\* Consumer

## **STAFF**

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## **EXECUTIVE SUMMARY**

### **INTRODUCTION**

On September 29, 1995, Governor Parris N. Glendening announced the appointment of a Task Force on Assisted Living. As part of the Regulatory Review and Reduction Initiative, this announcement is consistent with Governor Glendening's commitment to improve State government and to make it more responsive to the needs of Maryland citizens.

### **OVERVIEW**

Over the last several years, the State of Maryland along with other states, has seen an increase in group homes, sheltered housing, domiciliary care homes and board and care homes for the elderly. In part, the demand for more community-based services is due to the increase in numbers of the aging population and also to changes in health care delivery.

In Maryland, a variety of programs are considered Assisted Living; however, no comprehensive or coordinated definition exists. In addition, there is fragmentation among the Office on Aging (OOA), the Department of Human Resources (DHR) and the Department of Health and Mental Hygiene (DHMH); those agencies that fund, monitor and regulate public and private Assisted Living programs in the State.

Recognizing this problem, the Governor charged the Task Force with developing a consolidated, consistent and comprehensive Assisted Living policy for the State of Maryland.

### **FINDINGS/ISSUES IDENTIFIED BY THE TASK FORCE**

The Task Force approached the Assisted Living problem in Maryland through a number of public meetings, presentations, site visits, review of reference materials and thoughtful discussion. The findings of the Task Force include the following:

1. Overall Fragmentation/Lack of Coordination/Lack of Flexibility
2. Lack of Uniform Standards/Uneven Regulatory Oversight
3. Need for a Single Point of Entry for Consumers and Providers
4. Need for Further Study of Reimbursement Issues
5. Need for a Balanced Statement of Philosophy in Drafting New Assisted Living Regulations
6. Need for a Uniform Definition of Assisted Living

## RECOMMENDATIONS

The following recommendations were adopted by the Task Force:

1. **Comprehensive Definition.** Assisted Living is a residential or facility-based program that provides supportive services, supervision, personalized assistance, and health related services, or a combination thereof, at a variety of levels and in a variety of settings. An Assisted Living Program provides a continuum of care or services that meet the needs of an individual who is unable to perform or needs assistance in performing the activities of daily living or instrumental activities of daily living, in a way that promotes optimum dignity and independence.
2. **Regulatory Oversight.** To resolve issues of fragmentation and lack of coordination and to ensure quality of care and life to the residents of Assisted Living, the Task Force recommends that DHMH be designated the lead agency with regulatory oversight and accountability for Assisted Living.
3. **Building and Fire Codes.** The Task Force recommends that State and local fire and building codes be reviewed and modified to promote goals of the Task Force.
4. **Nature of Regulations.** The Task Force recommends that DHMH, with concurrence from the Secretary of DHR and the Director of OOA, shall develop a single and uniform set of regulations.
5. **Monitoring, Inspections and Enforcement.** The Task Force agrees that in order to protect consumers, monitoring and enforcement are important components of the regulatory functions. The Task Force recommends that periodic inspections shall occur to ensure the safety and welfare of Assisted Living residents.
6. **Point of Entry for Providers.** The Task Force recommends that DHMH shall act as the point of entry for all Assisted Living providers and establish a streamlined licensure application process.
7. **Point of Entry for Consumers.** The Task Force recommends that DHMH shall provide the OOA and other State agencies that routinely receive inquiries from the public with the necessary information to respond accurately and effectively to requests regarding Assisted Living.
8. **Affordability and Access.** The Task Force recommends that a goal of the regulations is to promote the provision of affordable and accessible Assisted Living throughout the State.
9. **Future of the Task Force.** Membership of the Task Force should be expanded to reflect greater representation of individuals with disabilities. It is recommended that the Task Force continue its work on issues including: 1) Assisted Living for individuals with disabilities, 2) Accreditation of Assisted Living Programs and its relationship to licensure, 3) Reimbursement and fiscal impact, and, 4) the relationship among community-based services provided by residential service agencies, home health agencies, other personal assistance services, traditional nursing homes, and Assisted Living programs under the regulations.

## **Background**

**Creation of the Task Force on Assisted Living.** On September 29, 1995, as part of the Regulatory Review and Reduction Initiative, Governor Parris N. Glendening announced the appointment of a Task Force on Assisted Living. Committed to improving State government and to make it more responsive to the needs of Maryland citizens, Governor Glendening charged this special Task Force with the following:

1. To determine the public health and safety needs for residents of Assisted Living Programs.
2. To review and propose modifications to existing laws, regulations, policies and procedures in order to provide more efficient and effective care to the citizens of Maryland.
3. To identify standards to be included in a singular set of regulations.
4. To propose the merger of various State Agency or Departmental responsibilities and to eliminate duplication.
5. To determine potential savings of dollars and personnel.
6. To identify customer friendly reforms that could be achieved while focusing on internal efficiencies and common sense.

**Composition of the Task Force.** The Governor appointed a representative group of citizens to the Task Force. These included community and consumer representatives, providers, and State officials from the affected State agencies. The Governor also asked the leadership of the State Senate and House of Delegates to appoint a representative of these respective bodies. Dr. Barbara R. Heller, Dean, School of Nursing, University of Maryland at Baltimore and State Senator Paula C. Hollinger (District 11, Baltimore County) were named by the Governor to Co-Chair the Task Force.



## Introduction

Over the last several years, the State of Maryland along with other states has seen an increase in group homes, sheltered housing, domiciliary care homes and board and care homes for the elderly. In part, the demand for more community-based services is due to the increase in numbers of the aging population and also to changes in health care delivery. In 1990, the number of elderly aged 65 and older in Maryland was 514,359. This number is projected to increase to 1,003,595 by 2020. Within this group of elderly, a significant increase will occur for the "old-old," that is, individuals age 85 and over; this represents a 122 percent increase in the population.<sup>1</sup>

Assisted Living, as it has developed, is generally considered a category of care and housing for the elderly and individuals with disabilities that is provided to individuals who are no longer independent. Generally, assistance is given with activities of daily living (walking, getting in and out of bed, bathing, eating, grooming, toileting), assistance with instrumental activities of daily living, (shopping, check-writing), supervision of varying degrees to ensure safety and protection, and some degree of medical intervention.

In Maryland, a variety of programs are considered Assisted Living; however, no comprehensive or coordinated definition exists. The Office on Aging and the Department of Human Resources fund programs such as Senior Assisted Housing and Project Home/CARE. Through their respective statutes, these agencies regulate these programs for quality and safety.

In order to address safety in the non-State-funded programs, the Maryland General Assembly mandated the development of quality and safety standards through the Department of Health and Mental Hygiene and its Domiciliary Care Program. As continued concerns and issues were raised about Assisted Living, the Maryland General Assembly altered the Domiciliary Care law to include a Registered Domiciliary Care Program which added approximately 1,300 previously unregulated residential settings. The law also was amended to strengthen penalties against unlicensed providers. Although the Legislature mandated this regulatory program for domiciliary care, no funds were appropriated for its implementation.

In 1995, a bill was proposed to the Maryland General Assembly to establish Assisted Living in Maryland. Because of the fragmentation among State agencies, little agreement was reached about how to proceed. This led to the bill's defeat. This Task Force was asked to bring together experts across the State to develop a comprehensive policy.

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<sup>1</sup> Projections provided by the Maryland Department of Planning, 1995 Revision.

## **Findings/Issues Identified by the Task Force**

The Task Force approached the Assisted Living problem in Maryland through a variety of mechanisms. Six Task Force meetings were held and were open to the public. In addition, members of the Task Force went on several site visits including a visit to a domiciliary care home, group home and subsidized senior housing. (A list of all site visits is included in Appendix A.) Presentations were made to the Task Force by a variety of interested and affected parties. (A list of all presentations is included in Appendix B.) Finally, reference materials from other states and the pertinent literature were reviewed.

As indicated, the Task Force included a diverse group with varying interests and philosophies. Issues were openly discussed and debated. A consensus was reached on the majority of issues through extensive discussion. What follows is a brief summary of the discussion and issues identified by the Task Force

### **Overall Fragmentation/ Lack of Coordination/Lack of Flexibility**

The current system of Assisted Living for the elderly is managed by three different Executive agencies, the Department of Health and Mental Hygiene, the Department of Human Resources, and the Office on Aging.

The programs appear to overlap, and the services being provided are similar but the regulatory requirements are different. This is confusing to both providers and consumers.

The Task Force also recognized that a variety of other similar programs regulated by the State are designed specifically for individuals with disabilities. Each of these programs is governed by separate definitions, criteria and regulations. In addition, programs are being operated that do not fit into any of the categories of Assisted Living defined by State law and therefore are not regulated. Further, creative models of Assisted Living could be developed, but current regulations do not easily comport with these new approaches. This results in impediments on the market to design creative solutions for Assisted Living.

The Task Force agreed that, although there are some very good aspects to each of the programs currently regulated by the State, no apparent reason or logic exists for the overall system in Maryland. The "system" was astutely described as a patchwork of different programs created at different times to meet different needs. Little coordination exists among the varied programs to ensure consistency. The programs described by members of the Task Force, staff and others, included Project Home (DHR), Domiciliary Care, Registered and Licensed (DHMH), and Senior Assisted Housing (OOA). Alternative Living Units ("ALUs") and group homes for individuals with disabilities were also discussed; however, these programs were not the focus of the Task Force at this time.

### **Regulatory Structure of Assisted Living Type Facilities in Maryland <sup>2</sup>**

<b>TYPE OF FACILITY</b>	<b>LICENSING ENTITY</b>	<b>NUMBER OF SITES</b>
Registered Domiciliary Care (2 to 4 persons)	DHMH	1300
Licensed Domiciliary Care (5 or more persons)	DHMH	80
Senior Assisted Housing (Group Home <16 persons)	OOA	201
Project Home/CARE (Program for DHR clients)	DHR	496 providers

#### **Lack of Uniform Standards/ Uneven Regulatory Oversight**

The number of various programs and the lack of coordination and fragmentation has led to various philosophies of regulation, duplication of regulation, and uneven monitoring and enforcement. Regulatory requirements vary between the programs but the services being provided are similar. An example was given that in the Medicaid Waiver Program administered by the OOA, a special training program regarding medication administration is available to unlicensed staff. This program is not available to Domiciliary Care providers who service similar residents with similar needs.

Several Members of the Task Force expressed concern over local government ordinances which exceed State requirements. Charles, Montgomery, Prince George's and Harford Counties all impose more stringent or different requirements on providers.

The Task Force was particularly concerned about the different levels of monitoring that are required for similar types of residents. For example, the OOA through its local area offices monitors programs up to four times a year whereas DHMH conducts annual inspections for licensed Domiciliary Care Home. Inspection for registered Domiciliary Care is limited to inspection on a complaint basis only.

#### **Point of Entry**

Due to the different regulatory frameworks that have been developed, there is difficulty and confusion for providers wishing to enter the Assisted Living market. The point of entry also is confusing for consumers and customers of these services. No central agency provides

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<sup>2</sup>Information provided by DHMH, OOA and DHR

information and, when information is available, it is limited at best. It is necessary for a consumer to literally "shop around" for a program to meet his or her needs. While the Task Force agreed that this is not acceptable, it is recognized that for people with disabilities, the concept of choice, the ability to determine which provider to use and the right to live independently in the community are paramount.

## **Reimbursement**

Although reimbursement was discussed often, the Task Force reached no conclusions or recommendations. In part, this was due to the complexity of the issue and to the uncertainty which exists at the national level. It was agreed that this issue would be discussed in further work of the Task Force specifically as it relates to recommendations regarding accessibility and affordability.

## **Philosophy**

The Task Force discussed at length the status of Assisted Living in Maryland and the philosophy of a proposed program for Maryland. Some characterize Assisted Living as health care facilities based on a medical paradigm where the focus is the delivery of medical services or taking care of residents. Others include Assisted Living programs such as alternative housing or residential sources based on a social model where quality of life and promotion of independence are considered the primary goals. Discussions also focused on concepts of shared or negotiated risk and the ability and choice of an individual to "age in place." The Task Force agreed that a balance between these viewpoints should be reflected in drafting new Assisted Living regulations.

## **Definition**

The Task Force adopted a definition of Assisted Living based on consumer independence, dignity, quality of life and the provision of supportive services. (The definition is included in the Recommendation section of the report.)

The issue of an upper boundary or a limit on who could live in Assisted Living was problematic to the Task Force and various views were presented. Although it was recognized that individuals who require substantial nursing care and are nursing home eligible are currently living in the community in regulated and unregulated Assisted Living programs, some were concerned that these individuals should be cared for in nursing homes only. The linkage of Assisted Living to nursing home care was discussed at length, focusing on quality and the ability of an Assisted Living provider to adequately care for this type of resident. However, the consensus of the Task Force was not to include an upper boundary in the definition. There was disagreement on this issue, particularly among those members representing the nursing home industry. Consequently, the upper boundary discussion could remain an issue for further consideration by the Task Force.

## Recommendations to the Governor

Based on the problems identified and a consensus of the Task Force, the following recommendations are forwarded to the Governor for his consideration.

**1. Comprehensive Definition.** In order to resolve the issues pertaining to philosophy, fragmentation, and lack of coordination, the Task Force recommends that the Maryland General Assembly amend current State law to redefine certain models of Assisted Living.

Assisted Living shall be redefined as follows:

Assisted Living is a residential or facility-based program that provides supportive services, supervision, personalized assistance, and health related services, or a combination thereof, at a variety of levels and in a variety of settings. An Assisted Living Program provides a continuum of care or services that meet the needs of an individual who is unable to perform or needs assistance in performing the activities of daily living or instrumental activities of daily living, in a way that promotes optimum dignity and independence.

This definition provides for a continuum of care or services; providers would be licensed based on the level of services they provide. The Task Force proposes several levels ranging from residents who are almost completely independent to residents who may require nursing care or 24-hour supervision. An advantage to this definition is that it facilitates the ability of consumers to "age in place" and decreases the likelihood or necessity of moving from one provider to another. The definition also enables providers to expand services to meet the changing needs of residents.

The agreed upon definition applies equally to the elderly population and to individuals with disabilities. However, because of the time constraints, the Task Force agreed to limit its initial recommendations to the elderly population and to the Assisted Living programs currently regulated by the Licensing and Certification Administration in DHMH, the OOA, and DHR<sup>3</sup>. Current State laws that would be affected include those pertaining to Domiciliary Care, Group Senior Assisted Housing, and Project Home. The Task Force was clear that redefinition of these programs would not affect the ability of any Executive agency to administer an Assisted Living program, fund an Assisted Living program, provide technical assistance to Assisted Living providers, or otherwise carry out the programmatic aspects of their existing programs.

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<sup>3</sup> During the course of the Task Force's discussions, however, it became clear that the Project Home Program under the auspices of DHR serves non-elderly individuals as well.

Furthermore, the Task Force does not intend to regulate under this definition the following:

- Nursing homes,
- Services provided by family members,
- Services provided in a private residence by home health agencies, private service agencies, or through other personal assistance programs.

**2. Regulatory Oversight.** In order to resolve issues of fragmentation and lack of coordination and to ensure quality of care and life to the residents of Assisted Living, the Task Force recommends that DHMH be designated the lead agency with regulatory oversight and accountability for Assisted Living. DHMH shall draft, promulgate and implement regulations for Assisted Living. Prior to promulgation, the Secretary shall obtain concurrence with the Secretary of DHR and the Director of OOA. In addition, the Secretary of DHMH shall consult with the regulated industry and other affected parties, including consumers and their advocates. The regulations shall permit delegation of the monitoring and inspection functions to other State agencies, including OOA and DHR, and local agencies. Further, State and local enforcement agencies should coordinate their efforts.

**3. Building and Fire Codes.** The Task Force recognizes the difficult balance that must be reached between maintaining personal safety and permitting quality of life choices as core values based on the acceptance of shared or negotiated risk. The Task Force recommends that State and local fire and building codes be reviewed and modified to promote the goals of the Task Force.

**4. Nature of Regulations.** The Task Force recommends that DHMH develop a single and uniform set of regulations that include, but are not limited to:

- Definition of levels of service,
- Quality standards based on outcome measurements,
- Safety standards,
- Qualifications and training of staff, and
- Other requirements that demonstrate that the needs of residents are met, including a resident "Bill of Rights."

The Task Force recommends that the agencies charged with developing standards review and consider existing regulations.

**5. Monitoring, Inspections, and Enforcement.** The Task Force agrees that in order to protect consumers, monitoring and enforcement are important components of the regulatory function. The Task Force recommends periodic inspections to ensure safety and welfare of Assisted Living residents. The agencies charged with developing the regulations will review existing monitoring requirements and develop a monitoring program that is reasonable, consistent among similar programs, and based on the level of service and performance history of the provider.

**6. Point of Entry for Providers.** To clarify operating procedures and requirements for Assisted Living providers and to facilitate the development of this residential alternative, the Task Force recommends that DHMH act as the point of entry for all Assisted Living providers and that DHMH establish a streamlined licensure application process.

**7. Point of Entry for Consumers.** The Task Force recognizes that the consumer may access services through a variety of State and local agencies. Therefore, to assist consumers and customers of Assisted Living, the Task Force recommends that DHMH provide the OOA and other State and local agencies which routinely receive inquiries from the public concerning Assisted Living, with the necessary information to respond accurately and effectively. This information would include how to access services, how to register complaints and report violations.

**8. Affordability and Access.** The Task Force recommends that a goal of the regulations is to promote the provision of affordable and accessible Assisted Living throughout the State.

**9. Future of the Task Force.** The Task Force recognizes that although a framework for Assisted Living is established through the recommendations in this report, there is still much work to do. The Task Force recommends that the membership of the Task Force be expanded to reflect greater representation of individuals with disabilities and that it continue its work at least on the following issues:

- Assisted Living for individuals with disabilities,
- Accreditation of Assisted Living Programs and its relationship to licensure,
- Reimbursement and fiscal impact
- The relationship among community-based services provided by residential service agencies, home health agencies, other personal assistance services, traditional nursing homes, and Assisted Living programs under the new regulations.

## **APPENDIX A**



## **SITE VISITS**

October 31, 1995

### **CHARLESTOWN RETIREMENT COMMUNITY** (Domiciliary Care/Assisted Living)

709 Maiden Choice Lane  
Baltimore Maryland 21223

### **SUNRISE OF TOWSON** (Domiciliary Care/Assisted Living)

7925 York Road  
Towson Maryland 21204

November 7, 1995

### **CONCORD APARTMENTS** (Senior Housing)

2500 West Belvedere Avenue  
Baltimore Maryland 21215

### **ST. LUKES PLACE** (Senior Housing)

2825 Lodge Farm Road  
Edgemere Maryland 21219

### **HOSANNA HOUSE** (Group Home)

2825 Lodge Farm Road  
Edgemere Maryland 21219

## **APPENDIX B**

## **PRESENTATIONS**

October 18, 1995

The Honorable Sue Ward  
Director  
Office of Aging

Steven Levenson, M.D.  
Director of Medical Services and Planning  
Asbury Methodist Village

Ms. Carol Benner  
Director of The Licensing and Certification Administration  
Department of Health and Mental Hygiene

Ms. Cass Naugle  
Executive Director  
Alzheimer's Association

Mr. Eugene Bartell  
Executive Director of Community Services Administration  
Department of Human Resources

Mr. DeWayne Oberlander  
CEO  
Harbor Life Services

Ms. Mary Clarkson  
Health Care Finance Administration

October 24, 1995

The Honorable Patricia J. Payne  
Secretary  
Housing and Community Development

Mr. John Bender  
Chief Fire Protection Engineer  
State Fire Marshal's Office

## **PRESENTATIONS**

October 24, 1995

Mr. James Brown, Jr.  
Executive Director  
Victory Housing

Mr. Glen Tipton  
Principal  
Cockran, Stephson and Dondervoet

Ms. Elizabeth Boehner  
Director  
Montgomery County Area on Aging

November 2, 1995

Mr. David Ward  
Maryland Disabilities Forum

Ms. Donna Dorsey  
Director  
Ms. Barbara Newman  
Maryland Board of Nursing

Mr. James McGill  
Office on Aging  
Harford County

Mr. Andrew Levy  
Esquire  
Brown, Goldstein and Levy

November 16, 1995

Mr. Eugene Bartell  
Executive Director of Community Services Administration  
Department of Human Resources

## **OTHER TESTIMONY/PRESENTATIONS**

**Ms. Isabella Firth**

**President**

**Maryland Association of Non-Profit Homes for the Aging (MANFA)**

**Mr. Thomas R. Shipley, Ed.D.**

**President**

**Blue Heron Assistant Living**

